

DRAFT
DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS
REGULATORY RESEARCH COMMITTEE
APRIL 20, 2007

TIME AND PLACE: The meeting was called to order at 11:07 a.m. on Friday, April 20, 2007, Department of Health Professions, 6603 W. Broad St., 5th Floor, Room 3, Richmond, VA.

PRESIDING OFFICER: David H. Hettler, O.D., Chair

MEMBERS PRESENT: Susan Chadwick, Au.D.
Meera Gokli, D.D.S.
Damien Howell, P.T.
Vilma Seymour, Citizen Member

MEMBERS NOT PRESENT: David R. Boehm, L.C.S.W.

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director for the Board
Amy Marshean, Senior Assistant Attorney General
Emily Wingfield, Chief Deputy Director
Susan Stanbach, Senior Management Analyst
Carol Stamey, Administrative Assistant

OTHERS PRESENT: No others were present.

QUORUM: With five members present, a quorum was established.

AGENDA: The agenda was revised to include the discussion of proposed fast-track Practitioner Self-Referral and Public Participation Guidelines Regulations.

PUBLIC COMMENT: No public comment was presented.

NEW VICE CHAIR: Dr. Hettler congratulated Dr. Chadwick on her appointment as Vice Chair.

APPROVAL OF MINUTES: On properly seconded motion by Mr. Howell, the Committee voted unanimously to approve the minutes of the January 17, 2006 meeting.

WORKPLAN ON EMERGING PROFESSIONS: Dr. Carter presented the Committee with a draft workplan on emerging professions and it is incorporated into the minutes as Attachment 1. Also, Dr. Carter presented a request for research

into the need for credentialing and regulation of medical aestheticians. The Committee noted that legislation regulating medical aestheticians becomes effective July 1, 2007 under the Board of Barbers and Cosmetology. Dr. Carter stated that she would draft a letter of response to Ms. Wilson.

The Committee also discussed the need to survey the respective boards to obtain new evolving and prior professions.

On properly seconded motion by Mr. Howell, the Committee voted unanimously to direct staff to monitor new evolving professions and to continue to monitor the medical aesthetician regulations prior to making any decision as to the Board of Health Professions considering research in the matter.

**WORKPLAN ON THE
NEED FOR CRIMINAL
BACKGROUND CHECKS:**

Dr. Carter presented a draft workplan on the need to conduct criminal background checks and it is incorporated into the minutes as Attachment 2. The Committee discussed the feasibility of reinstituting the felony conviction question on the licensure renewal form and noted that the agency could adopt as a policy issue. Additional discussion included the limited information provided by criminal background checks, inconsistency of records retained among the various states, cost benefit, conduct random sampling, possible retrieval of data from private vendors and the sex offender registry.

On properly seconded motion by Mr. Howell, the Committee voted to approve the criminal background draft workplan for recommendation to the full board.

**PRACTITIONER SELF-
REFERRAL
REGULATIONS:**

Ms. Yeatts apprised the Committee of the need for amendment to the Practitioner Self-Referral Regulations to allow for an agency subordinate. She stated that the proposed amendments could be submitted through the fast-track method.

On properly seconded motion by Dr. Gokli, the Committee voted unanimously to accept the proposed fast-track amendments to the Practitioner Self-Referral Regulations as presented for recommendation to the full board.

**PUBLIC PARTICIPATION
GUIDELINES
REGULATIONS:**

Ms. Yeatts apprised the Committee of the need for amendment to the Public Participation Guidelines Regulations to expand public participation by allowing electronic mailings.

On properly seconded motion by Mr. Howell, the Committee voted to accept the proposed fast-track amendments to the Public Participation Guidelines as presented for recommendation to the

full board.

NEW BUSINESS:

No new business was presented.

ADJOURNMENT:

The meeting adjourned at 11:58 a.m.

David H. Hettler, O.D.
Chair

Elizabeth A. Carter, Ph.D.
Executive Director for the Board

**VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS**

**Draft Workplan
Review of Emerging Health Professions**

Background & Authority

By virtue of its statutory authority in §54.1-2510 of the *Code of Virginia* to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation and level of regulation of health care occupations and professions, the Board is beginning an ongoing review of emerging health professions. The study will highlight individual professions selected by the Board for review.

To govern evaluative reviews, the Board has developed formal criteria and policies referenced in its publication, *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions, 1998*. Among other things, the criteria assess the degree of risk from unregulated practice, the costs and benefits of the various levels of regulation, and the advantages and disadvantages of the various alternatives to regulation that might protect the public. By adopting these criteria and application policies, the Board has endorsed a consistent standard by which to judge the need to regulate any health profession. The aim of this standard is to lead decision-makers to consider the least governmental restriction possible that is consistent with the public's protection. This standard is in keeping with regulatory principles established in Virginia law and is accepted in the national community of regulators.

Study Scope & Methodology. The general scope of this study will be to provide a review of the policy literature on selected emerging health-related occupations and professions in Virginia to better understand the scopes of practice of these practitioners and issues relating to the need for adequate safeguards for the public.

The Committee will make recommendations to the full Board concerning the practitioner group(s) to be selected. With the approval of the full Board, the Committee will examine the competencies currently expected of the selected practitioner groups in other jurisdictions to the degree that they exist. The Committee will focus their efforts in determining the answers to the following key questions for each group:

- What is the potential risk for harm to the consumer?
- What specialized skills and training do practitioners possess?
- To what degree is independent judgment required in their practices?

- Is their scope of practice distinguishable from other regulated occupations or professions?
- What would be the economic impact to the public if this group were regulated?
- Are there alternatives other than state regulation of this occupation which would adequately protect the public?
- If the Committee determines that this occupation requires state regulation, what is the least restrictive level that is consistent with the protection of the public's health, safety and welfare?

To answer the key questions, the following steps are recommended:

1. Conduct a review of the general policy literature, if any, related to the regulation of the respective group.
2. Conduct a review of the current relevant states laws and regulations.
3. Review malpractice insurance coverage data (if it is found to exist) in conjunction with other data to address Criterion One - Risk of Harm to the Public.
4. Review available reimbursement data to develop an estimate of how regulating this group may affect costs to address Criterion Five – Economic Impact
5. Prepare an initial draft report to the Board for public comment.
6. Conduct a hearing on the issue of the state regulation of this occupation, including any public health and safety issues germane to current practices as well as the potential fiscal impact which may result from such regulation.
7. Review all public comment, apply the Board's criteria and policies, and consider recommendations for changes in Virginia statute.
8. Prepare a draft with recommendations to the full Board.
9. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and Secretary.
10. If required based on recommendations by the Department Director and Secretary, amend the report and prepare a final report for their approval.

TIMETABLE

April 20 2007	- Regulatory Research Committee Workplan Review/Approval and recommendation to the full Board on the emerging profession(s) selected for this year's review.
July 31, 2007	-Draft Report to the Regulatory Research Committee/ Progress Report to the Board
August/Sept. TBA	-Public Hearing on Findings
October 24, 2007	- Report with Summary of Public Comment to the Regulatory Research Committee for Development of Recommendations and Report to Full Board
November 1, 2007	- Final Report to the Department Director and Secretary

Resources Required. The resources for this review are included in the FY 2007-08 Budgets of the Board of Health Professions. It is estimated that the review will require approximately 1/5th of the time of the Executive Director and general support from the Senior Regulatory Analyst and Board's Administrative Assistant. The total cost associated for this project, to include staff time, telephone charges, photocopying, office materials, and court reporter, is estimated to be \$4,000.

**VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF HEALTH PROFESSIONS**

**Draft Workplan
Criminal Background Checks for Regulated Health Professions**

Background & Authority

The Director of the Department of Health Professions has requested that the Board of Health Professions to examine the policy issues and implications related to requiring criminal background checks as a condition of licensure for health care professions in Virginia and make recommendations in time for consideration of potential legislation by the 2008 General Assembly.

Current Virginia statute does not authorize the boards to conduct automatic criminal history checks on applicants or licensees absent probable cause. However, when the respective boards are made aware through self-disclosure or other sources that a criminal history exists for an applicant or licensee, checks are authorized and are conducted on behalf of the respective boards. In 1997, the Board examined the issue of requiring criminal background checks as a condition of licensure and renewal and deemed it unnecessary and burdensome -- few states conducted such checks and the costs and delays were considered prohibitive.

Post 9/11 security has become more at issue, generally. Also, increasingly, public and private organizations have begun to automatically require criminal background checks of job candidates and volunteers and states' regulatory boards have begun to require checks of applicants for initial licensure and some also for renewal. Checks have become required by 26 Boards of Medicine (three did in 1997), and the Interstate Nursing Compact agreement has come into play which is pushing member boards to require background checks.

By virtue of the statutory authority of the Board of Health Professions to advise the Governor, the General Assembly, and the Department Director on matters related to the regulation and level of regulation of health care occupations and professions, the Board will conduct the study and provide recommendations through the Director and Secretary of Health and Human Resources accordingly (see §54.1-2510 of the Code of Virginia).

Study Scope & Methodology. The general scope of this review will be to provide a review

of the relevant policy literature relating to the criminal background determinations and the impact of requiring criminal background checks for initial licensure and renewal for all of the health professions regulated within the Department.

The Committee will focus their efforts in determining the answers to the following key questions:

- What is the potential risk for harm in maintaining the current background check system for only those instances in which there is probable cause through self disclosure and information from other sources?
- What are the potential costs of requiring checks of all applicants and renewing licensees in terms of money, manpower, and time? Would the potential benefits outweigh this cost?
- Are there alternatives to state regulation which would adequately protect the public?

To answer the key questions, the following steps are recommended:

1. Conduct a review of the relevant policy literature.
2. Conduct a review of the current relevant state and federal laws and regulations.
3. Review available information from the states' boards which require checks to determine the costs associated with the checks and reimbursement data to develop an estimate of how regulating this group may affect costs to address Criterion Five – Economic Impact
4. Review the public information available related to criminal backgrounds of applicants and licensees in Virginia. (NOTE: Neither the Department nor any board is authorized in statute to determine whether any applicant or licensee has failed to disclose a criminal background through background checks. Hence it is not currently possible to determine the extent of undisclosed criminal backgrounds.)
5. Prepare an initial draft report to the Board for public comment.
6. Conduct statewide hearings on the issue as the potential fiscal impact which may result from such regulation.
8. Review all public comment, apply the Board's criteria and policies, and consider recommendations for changes in Virginia statute.
9. Prepare a draft with recommendations to the full Board.
10. Review the report and recommendations by the Board, and publish a draft report for consideration by the Department Director and Secretary.

11. If required based on recommendations by the Department Director and Secretary, amend the report and prepare a final report for their approval.

TIMETABLE

April 20 2007	-	Regulatory Research Committee Workplan Review/Approval
June/July TBA -		Public Hearings on the Issues
July 31, 2007	-	Draft Report to the Regulatory Research Committee/ Progress Report to the Board
August/Sept. TBA	-	Receive Further Public Comment on Findings
October 24, 2007	-	Report with Summary of Public Comment to the Regulatory Research Committee for Development of Recommendations and Report to Full Board
November 1, 2007	-	Final Report to the Department Director and Secretary

Resources Required. The resources for this review are included in the FY 2007-08 Budgets of the Board of Health Professions. It is estimated that the review will require approximately 1/5th of the time of the Executive Director and general support from the Senior Regulatory Analyst and Board's Administrative Assistant. The total cost associated for this project, to include staff time, travel expenses telephone charges, photocopying, office materials, and court reporter, is estimated to be \$10,000.